
UTAH LABOR COMMISSION

RUSSELL P RUDY,

Petitioner,

vs.

**CATE EQUIPMENT COMPANY,
UTAH PROPERTY AND CASUALTY
GUARANTY FUND, AND EMPLOYERS
REINSURANCE FUND,**

Respondents.

**ORDER DENYING REQUEST
FOR RECONSIDERATION**

Case No. 06-1013

The Utah Property and Casualty Guaranty Fund ("the Guaranty Fund" hereafter) asks the Utah Labor Commission to reconsider its prior decision denying the Guaranty Fund's motion for review of Judge Hann's decision holding the Guaranty Fund liable for Russell P. Rudy's medical benefits under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this matter pursuant to § 63G-4-302 of the Utah Administrative Procedures Act.

BACKGROUND AND ISSUE PRESENTED

In summary, Mr. Rudy was involved in two accidents at Cate Equipment. Aetna provided workers' compensation coverage for the first accident; Industrial Indemnity provided coverage for the second accident. Mr. Rudy filed a workers' compensation claim for his injuries. Industrial Indemnity and Aetna each asserted that the other was liable. Then, prior to hearing, Industrial Indemnity accepted liability. On that basis, Judge Allen issued an order directing Industrial Indemnity to pay permanent total disability compensation and medical expenses. Industrial Indemnity accepted Judge Allen's order and complied for the next 13 years.

In 2006, the Guaranty Fund, Industrial Indemnity's successor in interest, obtained a medical opinion stating that Mr. Rudy's injuries did not result from his second accident at Cate, for which the Guaranty Fund provided coverage, but instead were caused by the first accident, for which Aetna provided coverage. Based on this opinion, the Guaranty Fund stopped paying Mr. Rudy's medical expenses. Mr. Rudy sought a Commission order directing the Guaranty Fund to resume payment. After an evidentiary hearing, Judge Hann ruled that the Commission's earlier adjudicative proceedings established the Guaranty Fund's liability. Judge Hann ordered the Guaranty Fund to resume payment of Mr. Rudy's medical expenses. The Guaranty Fund filed a motion for Commission review. The Commission affirmed Judge Hann's decision. The Guaranty Fund now asks the Commission to reconsider.

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DISCUSSION

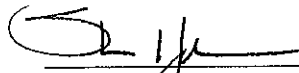
In requesting reconsideration, the Guaranty Fund argues that its agreement to "front" Mr. Rudy's previous medical expenses does not bar the Guaranty Fund from contesting liability for Mr. Rudy's current medical expenses. The Commission finds this argument inconsistent with the actual history of Mr. Rudy's claim for benefits.

At the time Industrial Indemnity accepted liability in this matter, Mr. Rudy's claim was pending adjudication by the Commission. Had Industrial Indemnity chosen to do so, it could have continued to deny liability for Mr. Rudy's claim. This would have resulted in an evidentiary hearing and an opportunity for Industrial Indemnity to present its evidence and obtained a decision from the Commission. But instead of taking that course, Industrial Indemnity waived its right to a hearing, acknowledged its liability for Mr. Rudy's benefits, and accepted the ALJs' orders requiring Industrial Indemnity to pay Mr. Rudy's benefits. As Industrial Indemnity's successor, the Guaranty Fund is also bound by these orders.

ORDER

The Commission reaffirms its previous decision in this matter and denies the Guaranty Fund's request for reconsideration. It is so ordered.

Dated this 28th day of January, 2010.



Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.